

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

KRISTIN SWEARINGEN,

Plaintiff,

vs.

AMAZON.COM SERVICES, INC. and
AMAZON.COM INC., Delaware corporations,
and, AMAZON.COM.DEDC, LLC, a Delaware
limited liability company,

Defendants.

Case No. 19CV22154

FIRST AMENDED COMPLAINT

Oregon Wage and Hour Claims

Damages estimated at \$999,999.99

Jury Trial Requested

NOT SUBJECT TO MANDATORY
ARBITRATION

Filing fee of \$531 per ORS 21.160(1)(c)

INDIVIDUAL AND CLASS ACTION COMPLAINT

1.

Kristin Swearingen (hereinafter “plaintiff”) complains as follows against
Amazon.com Services, Inc. and Amazon.com Inc., Delaware corporations, and
Amazon.com.dedc, LLC, a Delaware limited liability company (hereinafter
collectively “Amazon”), both on behalf of herself individually and, in addition, on
behalf of the other similarly situated employees.

2.

This is an action under state wage and hour law for certain present and former
employees of Amazon to recover unpaid wages, penalty wages, statutory damages,
and attorney fees, costs, and disbursements (and pre- and post-judgment interest
thereon), as well as equitable relief. All allegations herein are made to the best of

1 plaintiff's and her counsel's good-faith knowledge, information and belief, based
 2 upon the evidence adduced to date, and plaintiff reserves the right to amend the
 3 complaint upon the discovery of additional facts.

4 **PARTIES**

5 3.

6 At all material times, plaintiff and the class members were employees of Amazon.

7 4.

8 Amazon.com Services, Inc. and Amazon.com Inc. are Delaware corporations, and
 9 Amazon.com.dedc, LLC is a Delaware limited liability company. Each of these
 10 entities, and all of them, employed plaintiff and the class members in Multnomah
 11 County, Oregon and elsewhere.

12 **COMMON FACTS CONSTITUTING CLAIMS FOR RELIEF**

13 5.

14 Amazon rounded plaintiff's and the other class members' time punches and failed
 15 to pay for breaks of fewer than 30 minutes, resulting in a consistent net
 16 underpayment to them.

17 6.

18 Amazon rounded certain purported tax deductions up instead of down as required
 19 by 26 CFR § 31.3102-1(d), resulting in all or part of the deduction being prohibited by
 20 law.

21 7.

22 Amazon failed to pay plaintiff and the class members all earned and unpaid wages
 23 within the statutory deadline to do so upon termination of their employment

(including, but not limited to, as a result of the above violations).

CLASS ACTION ALLEGATIONS

8.

Amazon engaged in acts and practices that violated plaintiff's and the class members' rights under Oregon statutes. This action is brought on behalf of all current and former Oregon Amazon employees who received a paycheck on or after December 20, 2012 for work performed in Oregon.

Numerosity

9.

The class is so numerous that joinder of all members is impractical, consisting of an estimated hundreds of persons.

Commonality

10.

There are questions of law and fact common to the class, which predominate over any issues involving only individual class members. The principal questions are:

- a. Whether Amazon's common policies and procedures regarding rounding of time punches, failure to pay for breaks of fewer than 30 minutes, and rounding certain purported tax deductions up instead of down resulted in underpaying its employees and failure to pay them all earned and unpaid wages within the statutory deadline upon termination of their employment, and whether such violations were willful; and
- b. What remedies are available for the above-listed violations.

///

Typicality

11.

Plaintiff's claims are typical of those of the other class members because:

- a. Plaintiff is a member of the class.
- b. Plaintiff's claims stem from the same practice or course of conduct that forms the basis for the class claims.
- c. All of the class members' claims are based on the same facts and legal theories.
- d. There is no antagonism between the interests of plaintiff and the class members, because their claims are for damages provided to each class member separately by statute or the common law.

Adequacy of Representation by Plaintiff

12.

Plaintiff will fairly and adequately protect the interests of the classes because:

- a. There is no conflict between plaintiff's claims and those of the other class members.
- b. Plaintiff has retained counsel experienced in handling class actions involving wage and hour law, who will vigorously prosecute this litigation. Plaintiff's counsel has already committed substantial time and resources towards this case and remains willing and able to devote whatever additional future time and resources are necessary to pursue this litigation to completion.
- c. Plaintiff's claims are typical of the claims of the class members in that her

claims stem from the same practice and course of conduct that forms the basis of the class claims.

Compliance with ORCP 32 H

13.

Plaintiff has complied with the requirements of ORCP 32 H because her counsel mailed a prelitigation notice and demand to Amazon for each claim for relief and cause of action at least 30 days before the commencement of this action.

Superiority of Class Action

14.

Class resolution of this case is superior to other available methods for its fair and efficient adjudication, for at least the following reasons:

- a. The prosecution of separate actions by the class members could both result in inconsistent adjudications establishing incompatible pay practices and, as a practical matter, dispose of the legal claims of class members who are not parties to such separate adjudications or impede their ability to protect their interests.
- b. The common questions of law and fact described above predominate over questions affecting only individual members, and the questions affecting individuals primarily involve only calculations of individual damages.
- c. Individual class members would have little interest in controlling the litigation due to the relatively small size of most claims, the relatively unsettled nature of this area of the law, the complexity of the claims, the expense of the litigation, and because the named plaintiff and her lawyer

1 have already invested significant resources in the case and will continue to
2 vigorously pursue the claims on behalf of the class members.

3 d. To plaintiff and her counsel's knowledge, no other similar litigation has
4 been commenced, but if commenced, it could be coordinated under ORCP
5 32 K.

6 e. This is a desirable forum because Amazon does business in this county and
7 many class members reside here.

8 **FIRST CAUSE OF ACTION**

9 Oregon Unpaid Wages
10 (unpaid time claims only)

11 15.

12 All previous paragraphs are incorporated by reference herein.

13 16.

14 Pursuant to ORS 652.120, Amazon was required to pay plaintiff and the class
15 members all wages due, when those wages were due, but willfully failed to do so.

16 17.

17 Plaintiff and the class members are entitled to collect the wages due in an amount
18 to be proven at trial, together with attorney fees, costs, and disbursements, as well as
19 pre- and post-judgment interest.

20 **SECOND CAUSE OF ACTION**

21 Oregon Unpaid Wages Upon Termination
22 (unpaid time and unlawful deductions claims)

23 18.

All previous paragraphs are incorporated by reference herein.

19.

Pursuant to ORS 652.140, Amazon was required to pay plaintiff and the class members all wages due by the statutory deadline upon termination of their employment but willfully failed to do so.

20.

Plaintiff and the class members are entitled to collect all wages remaining due, in an amount to be proven at trial together with attorney fees, costs, and disbursements, as well as pre- and post-judgment interest, and the 30 days of statutory penalty wages provided by ORS 652.150.

THIRD CAUSE OF ACTION

Oregon Wrongful Deductions
(unlawful deductions claims only)

21.

All previous paragraphs are incorporated by reference herein.

22.

Pursuant to ORS 652.610, Amazon was prohibited from deducting certain amounts from the paychecks of Plaintiff and the Class members but willfully did so.

23.

Plaintiff and the Class members are entitled to the greater of \$200 or actual damages in an amount to be proven at trial, pursuant to ORS 652.615, together with attorney fees, costs and disbursements, as well as pre- and post-judgment interest.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which it is available.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court certify the Rule 32 class as indicated herein; award her and the other class members such actual, statutory, penalty, liquidated, and other damages as they may be individually entitled to, as set forth by category above and in amounts to be proven at trial; award the attorney fees, costs, and expenses of suit of plaintiff and the other class members; order Amazon to pay pre-judgment and post-judgment interest on all amounts due to plaintiff and the other class members as a result of their claims; and order such further or alternative relief as the Court deems appropriate.

DATED this 20th day of June, 2019

JON M. EGAN, P.C.

s/ Jon M. Egan

Jon M. Egan, OSB #002467
Attorney for Plaintiff